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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/039,789	03/16/1998	EDWARD LAWRENCE CARVER JR.	4537-01-2	9998

21832 7590 08/14/2003

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EXAMINER ..

SODERQUIST, ARLEN

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 08/14/2003

44

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/039,789

Applicant(s)

CARVER ET AL.

Examiner

Arlen Soderquist

Art Unit

1743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 27-30,32-35,38 and 40-46.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

*Arlen Soderquist*  
ARLEN SODERQUIST  
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: of the reasons of record and the following comments. Applicant is first directed to claim 27. The apparatus is required to have at least one reagent chamber containing at least one lysing agent. This read in its broadest possible interpretation covers a single lysing reagent in a single reagent chamber. If this is the case there is no possibility to select the lysing agent because there is only one lysing agent. If there is only a single lysing agent, that lysing agent is required to lyse all of the different species of blood. That may be possible if the only species present are those that can be lysed with that one lysing agent, however the claims are not limited to any specific species so that situation is not commensurate in scope with the claim. Thus, examiner's interpretation of the claim is proper. If one looks at the paragraph bridging pages 8-9 of the specification, it is clear that there are two lysing agents present and that there are three possible choices: lysing agent A, lysing agent B and a combination of the two lysing agents. This is what examiner believes to be the enabled scope of the specification. The claims are written in a manner that in the broadest case, for example, lysing agent A is the only lysing agent present and all species would have to be lysed with lysing agent A. This is what the specification does not support. Looked at in another way, a selection requires that there is a plurality of choices from which to make the selection. In the broadest interpretation of the claims there is no possibility to make a selection of lysing agent since there is only one lysing agent available. If applicant is arguing that the claims should be read that there are a plurality of lysing agents to choose from then the use of "at least one lysing agent" in the apparatus is inconsistent with the ability to select a lysing agent. In other words, the capability to make a selection requires that there is a plurality of choices from which to choose and the at least one lysing agent as found in the description of the apparatus goes beyond the enabled scope of the specification. .